IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ALVIN G. SYKES
Plaintiff

V. NO. 1:95CV99-B-D

COLUMBUS & GREENVILLE RAILWAY
Defendant

MEMORANDUM OPINION

This cause comes before the court upon cross-motions for summary judgment. The court has duly considered the parties' memoranda and exhibits and is ready to rule.

FACTS

All material facts are undisputed. The plaintiff dropped out of high school to enter the United States Marine Corps in June of 1982. He served in the Marine Corps until July of 1988, a total period of just over six years. Upon discharge from the Marine Corps, the plaintiff accepted a job with the defendant and, after a period of training, qualified for a position as a conductor. In April of 1989, the plaintiff resigned from his position with the defendant and reenlisted in the Marine Corps, serving exactly four years. Upon being honorably discharged from the Marine Corps for the second time, the plaintiff applied for reemployment with the defendant. The defendant denied the plaintiff's application for reemployment due to the lack of an available position. In March of 1994, the plaintiff began working for the Soo Line Railroad, where he is currently employed.

On the date that plaintiff resigned from the defendant's employ, he signed a resignation letter, prepared by the defendant, which stated in pertinent part as follows:

> I resign from the C&G Railway...Please remove my name from the seniority roster...I give up my contractual rights.

The plaintiff filed suit under the Veteran's Reemployment Rights Act, 38 U.S.C. § 2021 et seq. (hereinafter "the Act"). The relevant provision, 38 U.S.C. § 2024(a), states that when a person leaves employment to serve in the military, he is entitled to

return to his former position upon discharge. The provisions of the Act are limited to those who serve no more than four years in the armed forces (or five years, under certain limited circumstances).[1]

LAW

All material facts are undisputed, leaving this action ripe for judgment as a matter of law. The parties have submitted cross-motions for summary judgment, with the issues presented for determination as follows:

> 1. Does the four-year military service limitation found in the statute include those years of military service prior to the plaintiff's employment with the defendant?
>
> 2. Does the plaintiff's resignation letter waive his rights to reemployment under the Act?

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[1] The full text of 38 U.S.C. § 2024(a) reads as follows:

> Any person who, after entering the employment on the basis of which such person claims restoration or reemployment, enlists in the Armed Forces of the United States (other than in a reserve component) shall be entitled upon release from service under honorable conditions to all of the reemployment rights and other benefits provided for by this chapter in the case of persons inducted under the provisions of the Military Selective Service Act (or prior or subsequent legislation providing for the involuntary induction of persons into the Armed Forces), if the total of such person's service performed between June 24, 1948, and August 1, 1961, did not exceed four years, and the total of any service, additional or otherwise, performed by such person after August 1, 1961, does not exceed five years, and if the service in excess of four years after August 1, 1961, is at the request and for the convenience of the Federal Government (plus in each case any period of additional service imposed pursuant to law).

The language of the statute is clear and unambiguous. A person will only be entitled to benefits under the statute if the total of any service performed by that person after August 1, 1961, does not exceed four years (or five years if the service is at the request of the federal government). The plaintiff argues that the language "after entering the employment on the basis of which such person claims restoration or reemployment" applies to the number of years of service, so that only those years served after resigning from the defendant's employ count toward the four year total. However, such an interpretation is not supported from a reading of the plain language of the statute. The aforementioned language simply restricts the statutory benefits to those who leave employment to serve in the military and who return to the same employer seeking reemployment.

The plaintiff urges the court to look beyond the statute to the legislative history and post-legislative administrative interpretations to determine the meaning of the statute. However, it is well-settled that when a statute is clear and unambiguous as written, courts should not look beyond the express language of the statute. United States v. Evinger, 919 F.2d 381, 383 (5th Cir. 1990). As stated by the Fifth Circuit in Matter of Hammers:

> The sole purpose of statutory construction including, when appropriate, a review of all available legislative history, is to ascertain the intent of the legislative authority. The most certain expression of legislative intent in nearly every instance is the words of the subject statute. We may not look beyond them when, taken as a whole, they are rational and unambiguous.

988 F.2d 32, 34 (5th Cir. 1993).

The court's determination regarding the plain meaning of the statute is supported by White v. Frank,[2] a decision from the Western District of Texas and one of only two reported decisions on the issue of whether military service prior to employment counts against the statutory maximum. In White, the court considered the case of a plaintiff who had served thirty years in the United States Air Force prior to entering employment with Postal Service. The court held that the Act did not apply for two reasons. Not only did the plaintiff not leave employment with the Postal Service to enter the military, but, even if he had, the plaintiff's thirty years of military service prior to employment with the Postal

[2] 718 F. Supp. 592 (W.D. Tex. 1989), aff'd, 895 F.2d 243 (5th Cir. 1990).

Service would preclude him from receiving benefits under the Act. White, 718 F. Supp. at 598. The decision by the district court in White was affirmed without limitation by the Fifth Circuit. See White v. Frank, 895 F.2d 243 (5th Cir. 1990), cert. denied, 498 U.S. 890, 112 L. Ed. 2d 192 (1990).

The plaintiff urges the court to adopt the holding of Hall v. Chicago & E. Ill. R.R., 240 F. Supp. 797 (N.D. Ill. 1964). In Hall, the Northern District of Illinois, while conceding that the four-year provision was not expressly qualified to apply only to service subsequent to employment, nevertheless awarded the plaintiff benefits under the statute. Hall, 240 F. Supp. at 799. However, the Hall decision is not binding authority in this district and the court finds it to be unpersuasive.

In light of the court's ruling on the issue of service prior to employment, the court need not reach the issue of waiver.

CONCLUSION

For the foregoing reasons, the court finds that the defendant's motion for summary judgment should be granted.

An order will issue accordingly.

THIS, the _____ day of April, 1996.

NEAL B. BIGGERS, JR.
UNITED STATES DISTRICT JUDGE